THE LAW SCHOOL.

LECTURE NOTES.

EVIDENCE — ADMISSIBILITY OF DECLARATIONS OF TESTATOR TO PROVE CONTENTS OF LOST WILL. — (*From Prof. Thayer's Lectures.*) — Stephen's proposition in his Digest is this: "The declarations of a deceased testator as to his testamentary intentions and as to the contents of his will are deemed to be relevant, when his will has been lost and when there is a question as to what were its contents. . . . In all these cases it is immaterial whether the declarations were made before or after the making or loss of the will.[1] This is very questionable.

The case cited to support the proposition is *Sugden* v. *Lord St. Leonards*.[2] In this case the will had disappeared, and its contents were proved by the direct testimony of one witness who was well acquainted with them. That was the main evidence in the case. The judges repeatedly declared, that it did not need corroboration, but that it was satisfactory to find corroboration, and for that secondary purpose declarations of the testator made both before and after the making of the will were admitted. On appeal the admission of this evidence was sustained.

This is all that the case decided, but it is remarkable for many ill-considered *dicta* as to the hearsay exceptions, and as to the rules of evidence in general. See especially the opinions of Jessel, James, and Cockburn. Mellish, L. J., states the sounder doctrine, and his decision is consistent with the authorities.

The doctrine put forward by some of the judges that if evidence is admitted for one purpose, it may be used for any other, is not to be accepted; and the remarks of the Master of the Rolls as to the hearsay rule are peculiarly loose and inaccurate.

Sugden v. *St. Leonards* is cited with approval in a late Massachusetts case.[3] But in *Woodward* v. *Goulstone*,[4] in the House of Lords in 1886, the gravest doubt is thrown on the main propositions of the case, and the view taken by Mellish, L. J., is favored.

In the case of *Quick* v. *Quick*,[5] which *Sugden* v. *St. Leonards* disapproves, declarations of the testator, made after the execution of the will, were offered, not as corroborative proof, but as the only evidence of the contents of the will, and it was held that they were not admissible. The questions raised in the two cases were not necessarily the same.

LEASE — TENANT'S RELIEF IN EQUITY FOR BREACH OF CONDITION. — (*From Prof. Gray's Lectures.*) — When the landlord has expressly sanctioned the breach of condition, or knowing of it has waived performance by accepting rent, he is not allowed, even at law, to turn the tenant out.

In certain cases equity will afford protection where courts of law will not.

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[1] Art. 29.
[2] L. R. 1 P. D. 154.
[3] *Pickens* v. *Davis*, 134 Mass. 252.
[4] L. R. 11 App. C. 469.
[5] 3 Sw. & Tr. 442.